



FH
[REDACTED]

**STATE OF WISCONSIN
Division of Hearings and Appeals**

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

FTI/149234

PRELIMINARY RECITALS

Pursuant to a petition filed May 03, 2013, under Wis. Stat. § 49.85(4), and Wis. Admin. Code §§ HA 3.03(1), (3), to review a decision by the Waukesha County Health and Human Services in regard to FoodShare benefits (FS), a hearing was held on June 25, 2013, via telephone.

The issue for determination is whether Petitioner's appeal is timely as to both a notice of tax intercept tax issued to collect an overissuance of FoodShare benefits as well as the underlying overpayment.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
[REDACTED]

Respondent:

Department of Health Services
1 West Wilson Street
Madison, Wisconsin 53703

By: Sue Rhode

Waukesha County Health and Human Services
500 Riverview Avenue
Waukesha, WI 53188

ADMINISTRATIVE LAW JUDGE:

David D. Fleming
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) lives in Texas and has since August 2011.
2. A Notification of FS Overissuance dated September 24, 2012 was sent to Petitioner at [REDACTED]. It informed Petitioner that she had

been overissued FoodShare in the amount of \$87.00 for the period of August 1, 2012 through August 31, 2012. This is claim # [REDACTED].

3. A second Notification of FS Overissuance was sent to Petitioner at [REDACTED] address on September 24, 2012. That notice was not provided by the agency. It is apparent, however, from other agency records that it was mailed on September 24, 2012. It informed Petitioner that she had been overissued FoodShare in the amount of \$879.00 during the period from August 1, 2011 through July 31, 2012. This is claim # [REDACTED].
4. A repayment agreement dated October 2, 2012 was sent to Petitioner at the [REDACTED] address.
5. A dunning notice date November 2, 2012 was sent to Petitioner at the [REDACTED] address.
6. Dunning notices dated December 4, 2012 and January 3, 2013 were sent to Petitioner at the above address in [REDACTED].
7. A State of Wisconsin tax intercept notice, dated February 15, 2013, was sent to Petitioner at the [REDACTED] address and informed Petitioner that her tax refunds were subject to intercept to repay a \$966.00 overpayment of FoodShare benefits (Claim #s [REDACTED] and [REDACTED]). It contains appeal instructions and the appeal deadline was noted to be 30 days from the date of the notice.
8. A notice of referral to the US Treasury was sent to Petitioner on April 19, 2013 at the above address. It indicated that the \$966 has to be paid within 60 days of the notice or the debt would be submitted to the US Treasury. The notice also indicated the appeal right was a review by the Public Assistance Collection Unit.
9. This appeal was filed on May 3, 2013.

DISCUSSION

This decision begins with a description of the regulatory framework under which the agency seeks to recover this FoodShare overissuance.

The State is required to recover all FoodShare overpayments. An overpayment occurs when a FoodShare household receives more FoodShare than it is entitled to receive. 7 C.F.R. §273.18(a). The Federal FoodShare regulations provide that the agency shall establish a claim against a FoodShare household that was overpaid, even if the overpayment was caused by agency error. 7 C.F.R. §273.18(a)(2).

Once an overpayment is established, *Wis. Stat. § 49.85* provides that the department shall, at least annually, certify to the Department of Revenue the amounts that it has determined that it may recover resulting from overpayment of general relief benefits, overissuance of food stamps, overpayment of AFDC and Medical Assistance payments made incorrectly.

The Department must notify the person that it intends to certify the overpayment to the Department of Revenue for setoff from his/her state income tax refund and must inform the person that he/she may appeal the decision by requesting a hearing. *Id. at § 49.85(3)*.

The hearing right is described in *Wis. Stat. § 49.85(4)(b)* but is limited:

If a person has requested a hearing under this subsection, the department ... shall hold a contested case hearing under s. 227.44, except that the department ... may limit the scope of the hearing to exclude issues that were presented at a prior hearing or that could have been presented at a prior opportunity for hearing. (Emphasis added).

The time limit for filing an appeal of a tax intercept notice is 30 days. §49.85(3)(a)2, *Stats.*

As for the underlying overpayment, the Division of Hearings and Appeals can only make a decision on the merits of the matter it has jurisdiction, that is to say, legal authority to do so. One of the components of that legal authority is the requirement that an appeal be timely filed. For FoodShare cases an appeal must be filed within 90 days of the date of a negative action on the case by the agency. *See FoodShare Wisconsin Handbook (FSH), §6.4.1 and 7 CFR, §273.15(g).*

The first question here is whether or not Petitioner's appeal is timely as to the underlying overpayment as well as the tax intercept. I am concluding that the appeal is not timely as to the underlying overpayment. The agency sent the overpayment notices to the last known address in September 2012. It is Petitioner's responsibility to see that she is able to receive her mail. The appeal filed in May 2013 is not timely to challenge the September 2012 overpayment notices.

I do, however, conclude that the appeal is timely as to the State tax intercept as the notice was sent to the [REDACTED] address even though the agency was aware by that time of the Texas address as evidenced by the December and January 2013 dunning notices. Nonetheless, even though timely, the Division of Hearings and Appeals is not empowered to make a determination on the merits of the overpayment claim because the hearing right under the tax intercept law excludes issues that could have been addressed at a prior hearing opportunity.

CONCLUSIONS OF LAW

1. That Petitioner's May 3, 2013 appeal is untimely with respect to the September 24, 2012 notices of FoodShare overissuance.
2. Though timely as to the tax intercept notice because of a defective mailing, the Division of Hearings and Appeals is without authority to make a determination on the merits of overpayment issues for which there was a prior opportunity for a hearing.
3. That the Department may certify the sum of \$966.00 as an amount due and may proceed with the action to intercept the Petitioner's income tax refund and notify the US Treasury of the FoodShare overpayment.

THEREFORE, it is

ORDERED

That this matter is dismissed.

REQUEST FOR A REHEARING

This is a final administrative decision. If you think this decision is based on a serious mistake in the facts or the law, you may request a rehearing. You may also ask for a rehearing if you have found new evidence which would change the decision. Your request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and tell why you did not have it at your first hearing. If you do not explain these things, your request will have to be denied.

To ask for a rehearing, send a written request to the Division of Hearings and Appeals, P.O. Box 7875, Madison, WI 53707-7875. Send a copy of your request to the other people named in this decision as "PARTIES IN INTEREST." Your request for a rehearing must be received no later than 20 days after the date of the decision. Late requests cannot be granted.

The process for asking for a rehearing is in Wis. Stat. § 227.49. A copy of the statutes can be found at your local library or courthouse.

APPEAL TO COURT

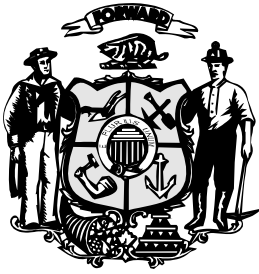
You may also appeal this decision to Circuit Court in the county where you live. Appeals must be served and filed with the appropriate court no more than 30 days after the date of this hearing decision (or 30 days after a denial of rehearing, if you ask for one).

For purposes of appeal to circuit court, the Respondent in this matter is the Department of Health Services. After filing the appeal with the appropriate court, it must be served on the Secretary of that Department, either personally or by certified mail. The address of the Department is: 1 West Wilson Street, Madison, Wisconsin 53703. A copy should also be sent to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400.

The appeal must also be served on the other "PARTIES IN INTEREST" named in this decision. The process for appeals to the Circuit Court is in Wis. Stat. §§ 227.52 and 227.53.

Given under my hand at the City of Milwaukee,
Wisconsin, this 19th day of July, 2013

\sDavid D. Fleming
Administrative Law Judge
Division of Hearings and Appeals



State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

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The preceding decision was sent to the following parties on July 19, 2013.

Waukesha County Health and Human Services
Public Assistance Collection Unit